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Right to adequate housing

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report submitted by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context, Raquel Rolnik, pursuant to Human Rights Council resolution 6/27.

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Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living

Summary

The present report, submitted in accordance with Human Rights Council resolution 6/27, is the third annual report to the General Assembly of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context. The report analyses the specific legal entitlements and protections granted to migrants with respect to the right to housing in international treaties and other international legal instruments. To shed light on the reach of the applicable legal provisions and their applicability to migrants, the report examines the interpretation of the relevant human rights monitoring mechanisms. Furthermore, the report assesses the challenges faced by documented and undocumented migrants in gaining access to adequate housing, paying particular attention to the situation of migrant workers in low-skilled and informal jobs, undocumented migrants, migrants belonging to minority groups and migrant women and children. Finally, the report explores some regulations and public policies affecting the right to adequate housing of migrants and provides examples of good practices. To conclude, the report offers some recommendations addressed to Governments on how to guarantee and improve the enjoyment of the right of migrants to adequate housing.

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I. Introduction

1. The present report, submitted in accordance with Human Rights Council resolution 6/27, is the third annual report to the General Assembly since the current Special Rapporteur, Raquel Rolnik, assumed her functions on 1 May 2008.

2. Since the submission of her previous report, the Special Rapporteur has undertaken two country missions and held numerous consultations with a wide range of stakeholders. The Special Rapporteur visited the United States of America from 22 October to 8 November 2009 and Croatia from 4 to 13 July 2010. She held consultations and participated in conferences and seminars with representatives of national Governments, United Nations agencies and other multilateral organizations and non-governmental organizations. She also undertook several activities under her "dissemination project", including the preparation of a guide and leaflet on development-based evictions, which is being distributed. During the thirteenth session of the Human Rights Council, the Special Rapporteur presented her annual report, on the impact of mega-events on the realization of human rights (A/HRC/13/20); her report on her mission to the United States of America (ibid., Add.4); a report on her mission to Maldives (ibid., Add.3); a follow-up report to country recommendations on Brazil, Cambodia and Kenya (ibid., Add.2); and a report on communications to and from States (ibid., Add.1).

3. In the present report, the Special Rapporteur focuses on the realization of the right of international migrants to adequate housing, an issue that has attracted interest and concern since the inception of the mandate. The report provides an overview of the legal framework underpinning the rights of migrants and the relevant jurisprudence in that regard. It also explores the challenges faced by migrants concerning their access to adequate housing and analyses the policies and regulations affecting their rights.[1] The report concludes with some recommendations addressed to Governments.

II. General overview

4. International migrants worldwide are estimated to number over 200 million, representing 3.1 per cent of the world population.[2] Ninety million of them are migrant workers. Forty-eight per cent of all international migrants are women. While the larger proportion of migrants moves from low- and middle-income countries to high-income countries, representing a total flow of 80 million persons, it is estimated that South-South migration accounts for 47 per cent of all migration from the South.[3] Migration between developing countries may be even higher if undocumented migration is considered, as official numbers are for the most part unknown, but it is estimated to be around one third of documented migration.[2]

[1] The Special Rapporteur is grateful for the extensive contributions received from many sources that informed her report, particularly the information provided by academic sources coordinated by the United Nations Educational, Scientific and Cultural Organization Chair in Social and Spatial Inclusion of International Migrants (SSIIM) at the Università Iuav di Venezia (Venice, Italy).

[2] United Nations publication, Sales No. E.09.III.B.1.

[3] United Nations Educational, Scientific and Cultural Organization, "Creating better cities for migrants", January 2010. Available from www.logiqo.com/easycontact/ec/british/opencities/jul10/creating_better_cities_for_migrants.pdf.

5. The growing number of international migrants can be considered a by-product of globalization. As a result of the declining cost of transportation, reduced barriers to trade and business and increased awareness of opportunities through the mass media and communications technologies, migration patterns have undergone a profound transformation in terms of intensification and geographical diversification. However, while international flows of capital and goods find few restrictions in the globalized world, a number of obstacles and requirements constrain international migration.[4] In recent decades, the world has witnessed an increase in government-imposed barriers to movement, especially for low-skilled migrants. Restrictions on migration are found in regulations on entering or staying in a host or transit country and can both directly and indirectly affect a migrant's access to housing. Nonetheless, evidence has shown that while such policies are ineffective in reducing the number of migrants, they certainly contribute to their vulnerability.

6. International migration has become a vital feature of globalization and an important source of economic growth. Migrants are known to have participated in creating prosperity and wealth in their host countries, as well as assisting development and poverty reduction efforts in their countries of origin through remittances. Moreover, remittances are essential in family strategies to tackle increasing economic and social inequality.[5]

7. Besides globalization, two recent phenomena affect global migration patterns. As expressed in the annual report of the Special Rapporteur to the General Assembly in 2009 (A/64/255), climate change is a factor influencing migration. As a consequence of environmental degradation, depletion of natural resources and natural disasters, many people around the world find their lives and health threatened, their houses and land destroyed and their sources of livelihood taken away. Affected populations are then forced to migrate to other regions within their countries or to other countries. Migrants may leave voluntarily in search of better lives or may be forcibly evacuated during disasters.

8. The global economic crisis is another element affecting global migration. Although remittances have proven to be more resilient than other forms of capital flow, the impact of the economic crisis has led to a drop in remittances affecting receiving families and countries across the world. Moreover, cuts in public budgets and services as a result of the crisis particularly affect migrants, who often need to resort to public services and infrastructure in the host country. The increase in unemployment disproportionately affects migrant workers in those sectors significantly affected by the economic crisis, such as construction, tourism and domestic work. With no regular employment and little income, migrants are less likely to afford to pay rent or mortgages. They are thus at risk of defaulting and becoming homeless. As explained in the Special Rapporteur's annual report to the Human Rights Council in 2009 (A/HRC/10/7), in Spain migrants were particularly affected by the crisis, and it is estimated that 180,000 Latin American families were at risk of default in 2008. Furthermore, discrimination and xenophobia are on the rise, including as a result of the economic downturn, and many Governments have

[4] P. Marcello Balbo (ed), *International Migrants and the City*, United Nations Human Settlements Programme and Dipartimento di Pianificazione Università Iuav di Venezia, June 2005.

[5] P. Marcello Balbo, "Social and spatial inclusion of international migrants: local responses to a global process", SSIIM Paper Series, vol. 1 (Venice, October 2009).

succumbed to demagogic policies matching or reinforcing the nationalistic sentiments of their constituencies.[5]

9. Migrants are particularly vulnerable to human rights violations, the enjoyment of housing being among the most endangered rights. The duties of migrants to the host State are equal to those of locals from the moment that they enter the host community, as they are bound by its laws. However, migrants do not enjoy equal rights and usually endure inferior conditions in every social sphere. Although several international instruments oblige States and other agents to ensure the right to adequate housing, migrants are frequently victims of discrimination in that respect.

10. The realization of the right of migrants to adequate housing is often limited owing to a number of factors, such as marginalization and intolerance, inadequate housing policies or inadequate coverage of social housing schemes, cultural barriers and obstacles stemming from the legal status of migrants. In most migration processes, it is common that migrant status represents a clear disadvantage when one is looking for a place to live. A number of factors usually combine to create this circumstance: the urgency of newly arrived migrants to find a home; their lack of information; the legal insecurity in which migrants find themselves in the host country; and the stereotyping and intolerance shown towards migrants in the public and private spheres. As a consequence, among underprivileged groups, migrants face added difficulties and are less likely to find adequate housing. In this context, the undifferentiating character of most housing policies respond imperfectly to this structural inequality and allow discriminatory practices to flourish.

11. States are under an obligation to ensure non-discrimination and equal treatment to migrants in the enjoyment of economic, social and cultural rights, including the right to adequate housing. Moreover, the high degree of vulnerability that migrants experience as a mere consequence of their status requires the adoption of special measures to counter the cumulative negative effect of systemic marginalization and discrimination. Regrettably, many States have explicitly indicated that they do not wish to provide the same degree of protection to migrants as to their own citizens and even less to undocumented migrants.

12. In the present report, the Special Rapporteur pays particular attention to the situation of migrant workers employed in low-skilled and informal work as well as undocumented migrants, not only because their housing situation is of grave concern, but also because they represent the largest proportion of migrants worldwide, and thus their human rights situation is regrettably replicated across the globe. The situation of migrant workers belonging to minority groups and migrant women and children is also explored, in the light of the multiple forms of exclusion these vulnerable groups experience. Before referring to the challenges faced by migrants in their right to adequate housing and the public policies affecting them, the report analyses the legal framework applicable to migrants regarding their access to adequate housing and evokes the importance of the principle of equality and non-discrimination in this context.

III. Legal framework

A. The right of migrants to adequate housing in international human rights law

13. In line with articles 2 and 11 of the International Covenant on Economic, Social and Cultural Rights, the right to adequate housing should be exercised without discrimination of any kind based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.[6]

14. Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination sets out the right of everyone, without distinction as to race, colour or national or ethnic origin, to equality in the enjoyment of the right to housing. Article 43 of the International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families requires States to ensure the same treatment regarding access of documented migrants to housing as is afforded to nationals, including social housing schemes and protection against exploitation in respect of rent. Moreover, article 64 requires States to promote sound, equitable and humane conditions in connection with international migration and to pay due regard not only to labour needs and resources, but also to the social, economic, cultural and other needs of migrant workers.

15. Article 6 of the International Labour Organization (ILO) Migration for Employment Convention (Revised) of 1949 requires parties to the Convention to apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals in respect of accommodation. Similarly, the ILO Workers' Housing Recommendation of 1961 calls upon the competent authorities to pay particular attention to the particular problem of housing of migrant workers and their families and to ensure as rapidly as possible equality of treatment between migrant workers and national workers in that respect.

16. At the regional level, article 13 of the European Convention on the Legal Status of Migrant Workers, requires States to accord to migrant workers treatment not less favourable than that accorded to its own nationals with regard to access to housing and rents; to ensure that standards of fitness of accommodation are kept up for migrant workers as for its own nationals; to protect migrant workers against exploitation in respect of rents; and to ensure that the housing of migrant workers is suitable. In addition, article 19 (4) (c) of the European Social Charter requires States to secure documented migrant workers and their families treatment not less favourable than that of their own nationals regarding accommodation.

B. Relevant jurisprudence of international human rights bodies

17. In General Comment No. 20 on non-discrimination in economic, social and cultural rights, the Committee on Economic, Social and Cultural Rights stresses that the rights enshrined in the Covenant, including the right to adequate housing, apply

[6] According to art. 2, para. 3, of the Covenant, developing countries may determine to what extent they will guarantee economic rights to non-nationals with due consideration to human rights standards and the needs of their national economy.

to all people, including non-nationals and migrant workers, regardless of their legal status and documentation. It thus affords equal protection to documented and undocumented migrants. Accordingly, it requests States to adopt measures, including legislation, to prevent and eliminate formal and informal discrimination and to ensure that individuals and entities in the private sphere do not discriminate on prohibited grounds.

18. General recommendation No. 30 of the Committee on the Elimination of Racial Discrimination calls on States to remove obstacles that prevent the enjoyment of the right to adequate housing to non-citizens and to guarantee them equal enjoyment of this right with citizens. In particular, the Committee requests States to guarantee the equal enjoyment of the right to adequate housing for citizens and non-citizens as well as to avoid segregation in housing and ensure that housing agencies refrain from engaging in discriminatory practices. In its decision on F.A. v. Norway (see A/56/18, annex III), after learning that housing advertisements in Norway contained requirements such as "non-foreigners desired", the Committee urged the State to adopt measures to ensure that housing agencies refrain from discriminatory practices and to guarantee to citizens and non-citizens the right to adequate housing.

19. In its concluding observations of 25 May 2007 on Egypt (CMW/C/EGY/CO/1), the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families expressed its concern about reports that some migrant workers suffer from discrimination, inter alia, in the area of housing, and encouraged the State to ensure that the rights provided for in the Convention are enjoyed without discrimination. The Committee expresses similar concerns with regard to non-Arab migrants in the Syrian Arab Republic in its concluding observations of 2 May 2008 (CMW/C/SYR/CO/1).

20. In its conclusions on Albania of 2006, the European Committee of Social Rights recalled that according to article 19, paragraph 4, of the European Social Charter, States must eliminate all legal and de facto discrimination concerning access to public and private housing for migrant workers and that, accordingly, no legal or de facto restrictions on subsidized housing may be implemented. In its conclusions on the United Kingdom of Great Britain and Northern Ireland, the Committee noted that there were no objective, pre-established and easily understandable eligibility criteria to qualify for housing benefits, and requested information from the Government on the number of foreign nationals who had been refused any form of social assistance on the grounds that they did not satisfy the habitual residence condition. Furthermore, in its decision on the case DCI vs. the Netherlands, the Committee stated that the State must provide adequate shelter to undocumented migrant children under its jurisdiction.

IV. Conceptual framework for combating discrimination in access to adequate housing

A. Principle of equality and non-discrimination

21. Discrimination is any differential treatment that is based on prohibited grounds of discrimination and that creates or maintains inequalities and disadvantages suffered by certain groups in society with respect to the enjoyment of human rights

(see E/C.12/GC/20, para. 7). Direct discrimination exists when legislation or policies are adopted with a view to overtly privileging some groups in society to the detriment of others. However, when looking at discrimination, States should also look at indirect discrimination, which concerns measures that, without explicitly discriminating on certain grounds, might have a disproportionate impact on the exercise of human rights by a particular group (ibid., para. 10). Such apparently neutral measures, which de facto favour dominant cultures, are illegitimate and must be outlawed by States in order to ensure the full realization of the equality and non-discrimination principle (ibid., para. 12).

22. Discrimination is often a precondition and by-product of the marginalization to which certain groups and individuals are subject and is the root of many inequalities in society. On many occasions migrants suffer multiple forms of discrimination on the basis of national origin, culture, religion or sex. The multiple layers of discrimination and exclusion faced by migrants affect their access to adequate housing. This marginalization is often a manifestation of larger forms of structural discrimination that extend through the institutional, cultural, social and economic fabric of society, adversely affecting the housing conditions and overall well-being of migrants.

23. Non-discrimination and equality provisions are thus critical components of the right to adequate housing and crucial for the advancement of migrants. As a key principle of international human rights law, non-discrimination is central to a human rights approach to housing, especially considering the often inadequate housing conditions of migrants. The effective realization of the right to housing through the enforcement of non-discrimination and equality principles is essential to allow migrants to lead dignified lives and participate fully as members of society.

24. States have an immediate obligation to ensure non-discrimination in the enjoyment of economic, social and cultural rights, including the right to adequate housing, regardless of their level of development, in order to reduce existing inequalities (see E/1991/23, annex III, para. 1). The obligation of non-discrimination requires the equitable allocation of resources and services to ensure the realization of the right to adequate housing to all, and is not subject to progressive realization. It entails prioritizing the needs of marginalized and disadvantaged groups; eliminating laws, policies and practices that disproportionately affect the right to adequate housing of certain groups; incorporating equality and non-discrimination principles in all legislation and policies; and adopting special measures to counter embedded discrimination and inequalities against particular groups. States have no justification for not protecting vulnerable groups from housing-related discrimination, as the obligation to prohibit discrimination is binding on all States even in times of severe resource constraints (see E/1991/23, para. 12, and E/C.12/GC/20, para. 13).

Private discrimination and corporate responsibility

25. To ensure the effective implementation of equality and non-discrimination principles, States must guarantee that the prohibition of discrimination is also respected by private parties. States are obliged to ensure that migrants receive fair treatment even when the State is not the provider of housing or related services. Hence, States must guarantee that private providers comply with the principle of non-discrimination and make sure that the private provision of services does not

represent an impediment to the availability, accessibility, habitability and affordability of housing for all sectors of society. In this respect, the obligation to protect entails the obligation to ensure that individuals and entities in the private sphere do not discriminate on prohibited grounds and thus the adoption of all necessary measures to prevent, eradicate and punish discriminatory practices between private actors (see E/C.12/GC/20, paras. 11 and 36-40). In that regard, the Committee on the Elimination of Racial Discrimination stressed that to the extent that private institutions influence the exercise of rights or the availability of opportunities, the State party must ensure that the result has neither the purpose nor the effect of creating or perpetuating racial discrimination" (CERD/48/Misc.6/Rev.2, para. 5).

26. With regard to the responsibility of private actors to respect human rights, the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, has developed a framework to guide the business and human rights agenda, which is based on three principles: the State duty to protect against human rights abuses by third parties, the corporate responsibility to respect human rights and the need for more effective access to remedies for victims.[7] Corporate responsibility requires specific human rights due diligence (to become aware of, prevent and mitigate the adverse human rights impact of activities and relationships of companies), and the provision of grievance mechanisms for victims of human rights abuses (see A/HRC/11/13).

B. Need for special measures

27. Non-discrimination and equality also imply that States have the obligation to recognize and care for the differences and specific needs of groups that suffer particular housing challenges or that have been historically discriminated against in terms of access to housing and essential services by the State or private actors. Therefore, the obligation to ensure non-discrimination requires positive measures of protection to be applied to particular groups, even in times of emergency or financial constraint (see E/C.12/GC/20, paras. 9, 12 and 13).

28. The protection of migrants against discrimination needs to go further to include some differential treatment or special measures in order to obtain substantive equal treatment, putting all members of the community on an equal footing. States are required to take affirmative action to attenuate or suppress the conditions that perpetuate discrimination and to rectify its cumulative adverse effects on housing (ibid., para. 9). Indeed, the Human Rights Committee pointed out, in General Comment No. 18 on non-discrimination, that not every differentiation in treatment will constitute discrimination if the aim is to achieve a purpose which is legitimate under the International Covenant on Civil and Political Rights and if the criteria used are reasonable and objective. However, the differential treatment should not go beyond what is needed to achieve the goal. Moreover, the Committee on Economic, Social and Cultural Rights has pointed out that the obligation to facilitate the prohibition of discrimination may entail the

[7] *Human Rights Translated: A Business Reference Guide*, Castan Center for Human Rights Law, International Business Leaders Forum and Office of the United Nations High Commissioner for Human Rights, 2008.

adoption of measures to ensure equal opportunities for minorities in fields such as health, employment, housing and education.[8] In General Comment No. 16, the Committee also stressed that temporary special measures may sometimes be needed in order to bring disadvantaged or marginalized groups of persons to the same substantive level as others.

29. Participation is also an important factor when ensuring the equal enjoyment of the right to adequate housing of non-citizens. Migrants are entitled to participate in decision-making on issues, programmes and policies affecting their living conditions by contributing to their design, delivery and monitoring as well as to the tailoring of special measures required to address their needs. States must adopt measures to guarantee the effective and active participation of migrants in this regard.

V. Main challenges in the realization of the right of migrants to adequate housing

A. Migrants working in low-skilled, low-paid and informal jobs

30. Migrants' access to housing is deeply affected by their economic status. It is important to make the distinction between: (a) migrants entering the host country as highly skilled professionals, with formal employment, high or middle incomes and access to pension and other social security schemes; and (b) migrants employed in low-skilled, irregular, seasonal and hazardous work, with low wages and no social security. The first group of migrants often have legal and economic access to purchase or rent high-quality accommodation in well-located neighbourhoods with full access to services, infrastructure and facilities. For migrants working in low-paid informal jobs, mostly in construction, tourism, care and domestic work, the situation is very different, as their salaries and irregular working conditions usually hamper their access to the housing market on the same footing as locals. The following section will focus on the housing conditions of the latter group of migrants.

31. Migrant workers often live in small private rented rooms or flats, properties arranged or provided by employers, slum dwellings, overcrowded houses of relatives and friends or sometimes social housing. They usually face discrimination and numerous obstacles in accessing private and public housing. Lack of information about housing alternatives and schemes, bureaucratic procedures, regulations in the housing sphere and tenants' rights often combine to make it difficult for migrants to pursue adequate housing even when national and local legislation does not prevent them from doing so. Moreover, on many occasions language constraints make these tasks harder or even impossible.

Access to private housing

32. In the private sector in most countries, it is difficult for low-income migrants to rent private housing, as homeowners often avoid renting to them because of xenophobic sentiments, fear of insolvency or uncertainty of income, inadequate

[8] See, for example, E/C.12/1/Add.19, para. 31; E/C.12/1/Add.25, para. 23; and E/C.12/1/Add.30, para. 33.

legal documents, short-term stays or lack of an employment record. Moreover, migrants are often asked to provide guarantees that they cannot access in the hosting country. When migrants manage to rent a private home, they are usually requested to pay onerous rents and make advance payments. Migrants may also face discrimination when trying to purchase a property and are sometimes barred by laws and regulations from doing so.

33. Owing to their condition as migrants, they find themselves in vulnerable situations when faced with price increases and unfair or rapacious treatment. Lacking the means to protect themselves from predatory practices and market trends, many migrants end up facing eviction for non-payment of rents and, subsequently, homelessness.

34. For example, in Turkey, many migrants live in substandard informally rented houses and pay higher prices than local people. In Australia, many newly arrived migrants live in poverty because they have to pay high rents from the limited salaries they obtain in low-paid employment.

Access to social housing and subsidies

35. In the public sphere, insufficient information and inadequate advice, discrimination in the allocation of dwellings or financial assistance, laws restricting the access of non-citizens to public housing, cumbersome bureaucracy and lack of access to grievance mechanisms restrict the access of migrants to public housing. In many countries migrants are not entitled to housing assistance or to public housing, which are reserved for long-term residents. Financial mechanisms supported by the State are also often off-limits for migrant workers.

36. For example in Gibraltar, migrants are not eligible to place their names on the Government housing list.[9] In Egypt, non-citizens can apply for private mortgages but are not eligible for financing programmes for low-income populations.

Overcrowded and unhealthy housing conditions

37. As a result of restricted access to public and private housing, migrant workers sometimes resort to living in substandard apartments or rooms, as well as in informal settlements on the outskirts of the city, without access to essential services or facilities. When finding their own accommodation is not possible, migrants are housed by their relatives, friends and co-nationals.

38. In her report on her mission to the United States of America (A/HRC/13/20/Add.4), the Special Rapporteur observed that many migrant families were living in conditions of severe overcrowding, particularly in Los Angeles.

39. In its concluding observations on France in 2008 (E/C.12/FRA/CO/3), the Committee on Economic, Social and Cultural Rights stressed its concern about the disproportionate concentration of migrants in deprived neighbourhoods with poorly maintained low-quality housing stock and requested the State to combat discrimination in housing, including by private actors.

[9] "Rock and a hard place", *The Guardian*, 28 March 2009. Available from www.guardian.co.uk/money/2009/mar/28/work-discrimination-gibraltar-morroco.

40. In Thessaloniki, Greece, 80 per cent of Albanian migrants were identified as homeless, with others living in poor housing conditions with minimal services or infrastructure.[10] In Rosarno, Italy, 55 per cent of seasonal workers had no access to running water in their place of residence, 54 per cent had no electricity, 60 per cent had no toilets and 91 per cent had no heating system.[11] In Spain, houses of migrants are smaller, older and more poorly equipped and maintained than the homes of the rest of the population.

Living in the workplace

41. Many migrant workers live in accommodations provided by their employers. In some countries, employers of migrant workers are required to provide them with housing. Such housing often lacks the necessary infrastructure, space and maintenance, however. In some cases migrant workers are housed in unfinished buildings, in shacks, in the open air or in metal containers with insufficient ventilation, electricity and sanitary infrastructure. On occasion, employers request a high percentage of the worker's salary to cover accommodation costs, even if the housing is substandard.

42. In her report on the mission to Maldives (A/HRC/13/20/Add.3), the Special Rapporteur expressed concern about the dire housing and living conditions of migrants who came to the country to work on construction sites, in resorts and in the domestic sector. Some 80,000 migrants, 25,000 of whom lack regular status, live in the country. The Special Rapporteur witnessed the hardships endured by migrants at various construction sites.

43. In Malaysia, migrant workers are sometimes accommodated by their employers in blocks of 10 metal containers hosting up to 8 people each. Potable water, air systems, electricity and sewerage are often scarce.[12] In Singapore, migrant workers have been found living fenced up in windowless rooms holding up to 30 workers.[13]

Segregation and spatial exclusion

44. The segregation within the urban structure of the hosting territory is another dimension of migrant housing conditions: stereotyping, xenophobia and suspicion against migrants and the erection of barriers to keep them away from the local community foster the exclusion of migrants from the urban space. Segregation is also a consequence of insufficient access to social housing and services, which denies migrants access to fully serviced neighbourhoods, confining them to unserviced and unplanned areas with poor conditions and insufficient infrastructure and further fragmenting cities and fostering spatial clustering. Moreover, the need

[10] "Migrants, minorities and housing: exclusion, discrimination and anti-discrimination in 15 member States of the European Union", European Monitoring Centre on Racism and Xenophobia, December 2005. Available from: www.libertysecurity.org/IMG/pdf_EUMC_Migrants_minorities_and_housing.pdf.

[11] "The fruits of hypocrisy", Medici Senza Frontiere, March 2005. Available at http://www.doctorswithoutborders.org/press/2010/MSF-The-Fruits-of-Hypocrisy.pdf.

[12] "Trapped: the exploitation of migrant workers in Malaysia", Amnesty International Publications, London, 2010. Available from www.amnesty.org/en/library/asset/ASA28/002/2010/en/114eba25-6af5-4975-9ea3-02c22f6bdc5a/asa280022010en.pdf.

[13] "Temporary housing sites still needed", *Straits Times*, 18 September 2008. Available from http://migrantworkerssingapore.blogspot.com/2008_09_01_archive.html.

for undocumented migrants to remain invisible to authorities and the desire of all migrants to increase protection among members of each national community and to receive assistance from relatives and friends encourages ghettoized urban spaces.[5]

45. For example, in Johannesburg, South Africa, insufficient affordable housing has led to the concentration of West African migrants in a few inner-city areas and highly skilled migrants in gated neighbourhoods in the north of the city. In Padua, Italy, a fence 3 metres high and 80 metres long was built to separate the Via Anelli neighbourhood, where many migrants concentrated after being denied access to social housing elsewhere. In Berlin, Germany, Turkish "guest workers" are often found in certain neighbourhoods.[5] In Istanbul, Turkey, undocumented migrants tend to be concentrated in a few run-down neighbourhoods in the centre of the city where there are more informal employment opportunities and greater invisibility.

Violence and forced evictions

46. .Violence and forced evictions targeted towards migrants also raise serious concerns in this regard. Migrants living in informal settlements are often victims of forced evictions in the context of urban renewal projects. When no alternative accommodation is provided by the government, undocumented migrants, who often lack access to social security and services, are rendered homeless, forced to move in with friends or relatives or pushed to the outskirts of the city. In some cases, forced evictions are followed by deportation (see A/HRC/14/30, para. 52).

47. In France, for example, migrants from Côte d'Ivoire, residing in council homes in the north-eastern Parisian suburb of La Courneuve were evicted to make way for a new housing project and were living on the street.

B. Undocumented migrants

48. Undocumented migrants are those who lack legal status in the host or transit country. Some of them entered the country illegally, while others entered legally but their permission to remain was not extended or they lost their work permits together with their jobs. In addition, asylum-seekers whose refugee status has been denied, as well as victims of trafficking, often have irregular status. Indeed, it is not unusual for migrants to switch status during their stay in the host country. The United Nations has estimated that undocumented migrants represent 15 to 20 per cent of all international migrants, ascending to 30 million to 40 million persons.[14] In Asia and Latin America, it is estimated that 50 per cent of migrants are undocumented. Despite the data, it must be borne in mind that the majority of this group does not show up in statistics, since they are forced to live clandestinely for fear of deportation or detention.

49. Entering or staying in a country as an undocumented migrant creates numerous difficulties and hardship. The Special Rapporteur on the human rights of migrants has stressed that undocumented migrant workers are often homeless or living in crowded, unsafe and unsanitary conditions (see A/HRC/14/30, para. 47). In many countries, access to housing for migrants is strictly dependent on residence permits.

[14] *Irregular Migration, Migrant Smuggling and Human Rights: Towards Coherence*, International Council on Human Rights Policy (Geneva, 2010).

Migrants under temporary or irregular migration status are often excluded from the main housing distribution mechanisms.

Access to private and public housing and subsidies

50. In the private market, undocumented migrants find it difficult to rent a house or to access a mortgage in order to purchase a property. When they are able to rent, the accommodation is usually provided at an exploitative price and is in very poor condition; they are relegated to certain neighbourhoods with often insufficient access to facilities or services. However, for those people with irregular status, there is often no alternative but to accept any conditions, even if substandard, and to pay whatever price is requested.

51. In addition, undocumented migrants are excluded from most government services, including social housing. Undocumented migrants have no access to subsidized public housing or financing mechanisms intended for low-income populations, which are usually granted only to qualifying long-term residents or documented migrants.

Overcrowded and unhealthy housing conditions

52. Because of the restrictions in access to housing in the private market and in public schemes, undocumented migrants live in overcrowded public or private dormitories or rented private houses, which are often in substandard condition and insufficiently equipped. Moreover, they are sometimes forced to live in squatter settlements and slums, given the lack of alternative affordable housing. Cases have also been reported of undocumented migrants sharing flats with many others, with the same beds being used according to the work schedule of individuals, with 5 or 10 beds allocated to one room.[15]

53. Undocumented migrants are also often lodged by family members or rely on diaspora networks for housing. Families often feel the obligation to host migrants from their own countries, even if they lack the space or facilities for them. When none of those alternatives is possible, migrants are left on the streets and need to be accommodated in shelters for homeless people. As space in the shelters is often limited, conflicts have emerged between national and non-national homeless people. In some countries, public shelters do not accommodate undocumented migrants, while others provide such opportunities for one or two nights only.

54. For example in the Netherlands, African and Eastern European migrants are often housed with relatives or co-nationals, and a network has been created in the country to support and provide counselling to host families. In Belgium, local authorities in East Flanders and Brussels established shelters for undocumented migrants under the condition that they agree to register or prepare to return to their countries.[16]

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[15] "PICUM's main concerns about the fundamental rights of undocumented migrants in Europe", Platform for International Cooperation on Undocumented Migrants (Brussels, October 2009). Available from www.picum.org.

[16] Narada Luckanachai and Matthias Rieger, "A review of international migration policies", International Labour Organization (Geneva, 2010). Available at www.graduateinstitute.ch.

Criminalization of irregular migration

55. A further impediment results from the adoption of legislation to curb irregular migration through law enforcement and criminalization. The irregular movement of migrants and their stay in a country has been turned into a criminal offence in many countries, punishable by fine and even detention. The European Union directive on the return of illegal immigrants adopted in 2008 provides for the detention of undocumented migrants for 6 to 18 months, even if the person has not committed a crime. In several countries across the world, civil servants and public officials, including health and education workers, are obliged to report undocumented migrants to the police or else face criminal charges. In some countries, renting property to undocumented migrants is considered a crime punishable by detention.

56. In Singapore, for example, landlords can be convicted for housing undocumented migrants. Similarly, in Italy, homeowners renting to undocumented migrants may face up to three years' imprisonment.[14] In this context, it is worth recalling that the Parliamentary Assembly of the Council of Europe, in its resolution 1509 (2006), stressed that adequate housing and shelter guaranteeing human dignity should be afforded to irregular migrants.

Living in the workplace; forced labour and trafficking of migrants

57. The living conditions of migrants housed by their employers, described above, fully applies to undocumented migrants in similar conditions. Indeed, because of their legal status, undocumented migrants are more likely to find themselves in this kind of working arrangement. Moreover, they are on many occasions subject to exploitative working conditions. Lacking formal recognition in the country of destination, undocumented migrants are unaccounted for and can often become victims of trafficking and slavery-like conditions. Cases have been widely reported of migrants whose employers steal their passports or national identity cards and force them to work and live in sweatshops, where they are housed in small overcrowded rooms and barred from leaving the premises. For example, in Argentina, migrants from neighbouring countries and their children have been found locked up and sleeping in small storerooms in the clandestine cloth factories in which they worked.[17] It is worth recalling the responsibility of States to protect migrants who become trafficking victims from these hideous practices, as well as to prosecute and sanction the perpetrators and provide redress to the victims.

C. Migrants belonging to minority groups

58. In some cases, non-citizens are subject to double discrimination as both migrants and members of minority groups. During her missions, the Special Rapporteur has encountered numerous cases of migrants from minority groups who have been denied residency permits even though they have lived in the host country for decades or even generations. The lack of regularization obstructs their access to housing in private markets as well as housing assistance from local governments. The Special Rapporteur also received numerous complaints of forced eviction of migrants belonging to minority groups.

[17] "Argentine sweatshop fire brings immigrants' plight to fore", *Latin American Herald Tribune*, 31 March 2006. Available from http://laht.com/article.asp?CategoryId=14093&ArticleId=233628.

particularly vulnerable to abuse, exploitation and trafficking.[20] Women often work in informal and temporary jobs, such as in domestic work, care activities and other informal jobs, with no social security, few rights and lower wages than their male counterparts. In such conditions, migrant women often find it difficult to find private accommodation for themselves and their families when they are the primary caregivers.

Domestic workers

64. Migrant domestic workers often live in their house of employment. Sometimes their visa requirements legally bind them to reside with their employers. In this context, migrant women are known frequently to endure unsafe and unhealthy living conditions and substandard accommodations, without essential facilities, insufficient space and lack of privacy or security. In some cases migrant workers are forced to sleep in the bathroom, kitchen or closet. Concerns have also been raised about the vulnerability of migrant domestic workers to domestic violence, sexual harassment, forced confinement and other abuse in their place of residence. Migrant women are all the more vulnerable when fear of eviction or deportation and lack of awareness about their rights prevent them from denouncing violence or unhealthy living conditions. When domestic workers report these abuses, the police have been known to dismiss their claims and return them to their employers. Migrant women victims of trafficking suffer further forms of abuse, often being confined in their workplace in degrading conditions, forced to work 20 hours a day, prevented from any external contact and receiving no salary[21] (see also A/HRC/14/30, para. 55).

65. On several occasions, the Committee on the Elimination of Racial Discrimination has expressed its concern over the treatment experienced by migrant domestic workers, such as debt bondage, illegal employment practices, illegal confinement, passport deprivation, rape and physical assault (see A/48/18, paras. 359-381).

66. In several countries, migrant domestic workers have been found sleeping in storage areas, laundry rooms, garages or corridors or on the kitchen floor.[21]

Undocumented and unaccompanied migrant children

67. The housing situation of children is directly connected to the status of their migrant parents. When parents, and especially migrant single mothers, have no access to employment, social benefits or other sources of livelihood in the host country, children may end up living in substandard conditions or being homeless alongside their parents. On many occasions, migrant women heads of families, sometimes in charge of several children, have had great difficulty in finding employment and caring for their children, finding reduced opportunities to provide adequate shelter and essential food.

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[20] Inés Alberdi, Executive Director of the United Nations Development Fund for Women, "The world economic and financial crisis: what will it mean for gender equality?", speech to the Fifth Annual Meeting of Women Speakers of Parliament, Vienna, 13 July 2009. Available from www.unifem.org/news_events/story_detail.php?StoryID=901.

[21] "Swept under the rug: abuses against domestic workers around the world", Human Rights Watch, vol. 18, No. 7 (C), July 2006. Available from www.hrw.org/en/reports/2006/07/27/swept-under-rug.

68. When children do not have documents they face triple discrimination: as children, as migrants and as being undocumented, and thus they constitute one of the most vulnerable groups. Their right to adequate housing, as well as other economic, social and cultural rights, are often severely affected in those circumstances. Among undocumented children, a particularly difficult situation is that of unaccompanied migrant children, who, because their parents are unable to work or they have no parents to look after them, are forced into poverty and exclusion. Often living on the streets, in parks and in front of shops, these children are excluded from child protection services and are denied adequate housing. In certain countries, unaccompanied children are detained for living on the streets and are institutionalized in prison-like conditions or deported to countries where they have no family to care for them[15] (see A/HRC/14/30, paras. 58 and 59).

VI. Legislative and policy decisions affecting the right of migrants to adequate housing

69. Policies restricting the renting of social housing to non-citizens and their access to housing assistance and financing obstruct the opportunity of migrants to find adequate housing and force them to live in substandard conditions. Such practices challenge the role of the State as facilitator of access to essential services and housing.

70. Official policies restricting access to residence permits and tighter border controls have a detrimental impact on the access of migrants to housing, since the lack of documentation is often an impediment to gaining private accommodation (through renting and purchasing) or housing subsidies.

71. Several countries have adopted regulations to criminalize homeowners who accommodate undocumented migrants and legislation restricting the ability of non-nationals to purchase private residences. These practices have an immediate detrimental effect on the right of migrants to adequate housing. By deliberately imposing limitations on the access to housing of non-citizens, States are interfering with the rights of migrants under their jurisdiction.

72. Measures adopted by States to relax restrictions and controls over the types of accommodations employers may provide to migrant workers, such as granting permission to convert sections of industrial premises into dormitories or to house migrants in metal containers without facilities or services, also have a detrimental impact on the housing and living conditions of migrants. Moreover, allowing substandard accommodation for migrants entails differential treatment that could be considered discriminatory.

73. The lack of appropriate legislation criminalizing such practices as trafficking, forced labour and degrading treatment, as well as the obstacles sometimes placed on non-citizens to denounce such abuses, are a grave omission of the State's responsibility to protect those under their jurisdiction. These practices also lead to violations of the right of the affected persons to adequate housing.

74. In many cities, the inclusion of migrants in the urban fabric has resulted in positive outcomes not only for migrants, but also for the social and economic development of the host community. Societies are not only increasingly acknowledging the role of migrants in development, economic growth and cultural

enrichment, but also the responsibility of the recipient community to promote the well-being and fundamental rights of those groups.

75. The adoption of legislation recognizing the State's obligation to ensure equal access to housing and social services to migrants regardless of their immigration status is a good practice that allows all migrants to be on an equal footing with nationals when accessing essential services facilitated by the State. Those practices assist in combating substandard, unhealthy and overcrowded living conditions of migrants and promote the enjoyment of their right to adequate housing. In Argentina, the 2004 migration law established the State's obligation to guarantee access to shelter, social services and public goods under equal conditions to all migrants regardless of their immigration status (A/HRC/14/30, para. 61).

76. Regulations requiring employers to assist migrant workers in finding accommodation can have a positive impact, as long as the employers are also required to ensure that the essential components of the right to adequate housing are respected, specifically, affordability; habitability; availability of services and infrastructure; accessibility; and appropriate location. Effective monitoring of the housing conditions of migrants accommodated by their employers is essential to guarantee the realization of this right. In Singapore, the law requires employers to be responsible for and to bear the costs of foreign workers' upkeep, as well as to provide them with acceptable accommodation (although actual practice may not be in compliance with this regulation).

77. In some cases, local governments have established programmes to assist low-income migrant families in paying their rents, obtaining a house or doing maintenance work on their residences and to give both documented and undocumented migrants access to social policies. As a result, migrant families have equal opportunities to enjoy adequate housing and living conditions. Since migrants often represent a significant proportion of the poor, non-restrictive policies addressed to the entire low-income population can have a real impact on the living conditions of migrants. In Spain, the municipalities of Salamanca and Valladolid provide financial assistance to low-income populations, including migrants, to rent their homes.[22] Similarly, in Catalonia, the provincial immigration office, the Fundación Caixa Catalunya and a network of non-governmental organizations assist in the provision of housing for documented and undocumented migrants, as well as for asylum-seekers.[23]

78. In some countries, Governments have adopted commendable policies to thwart unfair treatment against migrant tenants and prevent discrimination against non-citizens trying to rent an apartment. In Canada, the Ontario Human Rights Commission adopted a policy on housing and human rights according to which tenants cannot be refused on grounds of citizenship or refugee status. The policy is also aimed at prohibiting harassment against tenants on those grounds (see A/HRC/14/30, para. 68).

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[22] Pablo Álvarez, "Aval municipal de 500 euros para facilitar el alquiler a los inmigrantes", *20Minutos.es*, 13 June 2007. Available at www.20minutos.es/noticia/246926/o/facilitar/alquiler/inmigrantes/;%20. See also www.aytosalamanca.es/Areas_y_Servicios/Bienestar_Social/Servicios_sociales/ceas.html.

[23] "Caixa Girona da su visto bueno a la fusión con La Caixa". Available at http://cajasybancos.blognomia.com/2010/05/.

79. A good practice witnessed in certain cities entails the involvement of migrants in local decision-making processes concerning urban planning and city projects affecting their neighbourhoods or areas of residence. Such approaches not only guarantee that the needs of migrants are taken into consideration when urban strategies are decided, but also foster a sense of the integration of those groups into their local communities. In Vancouver, Canada, the City Plan Initiative, undertaken from 1993 to 1995, entailed the participation of 20,000 people, including diverse cultural communities and migrant groups in the city-planning process, which subsequently became the City Plan Neighbourhood Visions process.[3]

VII. Conclusions and recommendations

80. **The way in which the status and rights of migrants are recognized determines their degree of integration in the country of destination. Legal and administrative restrictions imposed in the field of housing affect the living conditions of migrants and prevent them from living a dignified life, fully integrated into the community that hosts them. Patterns of discrimination and segregation are witnessed in cities across the world, where migrants are excluded from the essential structures and interactions that constitute urban life. Moreover, the present tendency towards migration is one of greater controls, physical barriers and the pursuit of migrants' invisibility.**[5]

81. **Migrants, however, have a number of rights in their country of destination that must be recognized and respected by public authorities and private individuals. Regardless of their immigration status, all migrants must be afforded essential levels of protection with regard to their access to adequate housing and living conditions. Accordingly, States are under the obligation to adopt all necessary measures to progressively ensure the realization of the right of non-citizens under their jurisdiction to adequate housing and to protect them from discriminatory, unfair and degrading treatment. It is worth recalling that, as part of their core obligations and with immediate effect, Governments should ensure access to basic shelter and housing to all migrants in their territory. To fulfil this obligation, the Special Rapporteur provides a number of recommendations.**

82. **Access to essential services provided by the State is often critical for migrants in vulnerable situations. As part of their responsibility to fulfil human rights and in line with the non-discrimination principle, States must work to overcome inequalities affecting migrants' access to housing, water supply, sanitation systems and other essential services.**

83. **States should elaborate and adopt a national housing strategy that establishes the objectives and available resources, time frame and responsibilities for the development of appropriate housing conditions that include the needs of migrants. In addition, States should ensure that laws, strategies and plans of action are implemented in such a way as to address discrimination by public and private actors, in particular with regard to the right to adequate housing, and take account of the situation of documented and undocumented migrants. State policies should include special measures and incentives to change the attitudes of public and private actors towards migrants. States should frequently review the regulations governing housing**

allocation in the public and private spheres and adopt effective inspection and enforcement mechanisms.

84. Measures to ensure access to adequate housing for migrants require effective universal housing policies, in addition to specific policy measures addressed to migrants. Targeted policies are necessary to make up for deficiencies in the market and the public provision of housing and to ensure equal access where embedded discriminatory practices prevent this from happening. Effective targeted policies require a reliable assessment of the housing needs of migrants, conducted in consultation with them. Matching the elaboration of universal policies inclusive of migrants with the adoption of special plans to address their particular housing challenges is thus recommended to help foster the real integration of migrants into the community and to promote the enjoyment of their right to adequate housing.

85. As part of social and cultural integration policies, States should involve migrants in decision-making processes and promote their active participation in public life through adequate representation and participation mechanisms. States should also inform migrants of their rights and duties in the country and promote their active exercise. Migrants are at a particular disadvantage as a result of lack of information. The need for appropriate housing information and advice to prevent housing exclusion and homelessness of migrants is essential, and States have the responsibility to provide it. They should ensure that information and advice on rights and duties relating to housing is available to migrants, including in their native languages. Furthermore, States should foster mutual understanding among local communities and ensure mutual respect for cultural diversity.

86. The effective monitoring of the housing situation is an immediate obligation of States. Governments should take the measures necessary to ascertain the full extent of homelessness and inadequate housing within their jurisdiction. The indicators used to assess the housing situation must be disaggregated on the basis of the prohibited grounds of discrimination, including national origin (and citizenship), so as to ensure an accurate description of the housing and living conditions of particularly vulnerable groups, such as migrants. Housing strategies should assess the needs of migrants through periodic housing surveys and monitor housing indicators related to equal opportunity.

87. It is recommended that States frequently review the regulations governing housing allocation in the public and private spheres and adopt effective systems of inspection and enforcement. Moreover, States should monitor and report on the potential exclusionary and discriminatory effects of housing markets.

88. Regulations and policies aimed at controlling property prices, providing access to urbanized land and affordable renting conditions, as well as the provision of grievance mechanisms to victims, including migrants, are essential to prevent rapacious practices against migrants and to counteract the disproportionate vulnerability of migrants in the housing market.

89. Discrimination and xenophobia affect the living conditions of migrants and their coexistence with the local community. They have thus been identified as key factors in the exclusion of migrants from adequate housing. States need

to combat xenophobia and discrimination as a matter of urgency and ensure that no legislative or administrative acts reinforce discrimination against migrants with regard to their access to social or private housing. Moreover, States should take effective measures to ensure that housing agencies and private landlords refrain from engaging in discriminatory practices.

90. **States must protect migrants from discrimination in access to housing by public and private actors, through appropriate judicial and administrative procedures, and guarantee redress to victims. Accordingly, States should adopt all necessary administrative and legislative measures and provide the appropriate mechanisms to prosecute and sanction discrimination and unfair and degrading treatment against migrants regarding their access to housing and should offer effective grievance mechanisms and remedies to the victims.**

91. **Policies and resources to ensure equality of access to affordable housing are essential. States should ensure that affordable housing is available in areas containing a high proportion of migrants. Moreover, States should adopt measures to make the allocation of housing by public landlords more transparent.**

92. **Transparency in the allocation of private housing is equally essential to ensure the appropriate treatment of migrants in the private housing sector. Besides monitoring the behaviour of the housing market in terms of rent prices and guarantees of fair and equal treatment, it is recommended that States establish mechanisms for the registration and regulation of private landlords, thus allowing for more effective monitoring of the allocation of housing to migrants.**

93. **The provision of housing should not be denied to undocumented migrants; even they must be afforded a minimum level of housing assistance that ensures conditions consistent with human dignity.**

94. **Education is a fundamental element in combating discrimination. States should provide training to authorities at the policymaking level and to officials working in the housing sector on human rights principles and standards, particularly on the right to adequate housing and on the principles of non-discrimination and equality of all.**